

COMMERCIAL AGREEMENT TO LEASE

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PART A – OFFER TO LEASE

This Commercial Agreement to Lease (the “Agreement”) is between

THE LANDLORD

and

THE TENANT

Name _____ Name _____

Name _____ Name _____

The Tenant offers to lease the Premises on the following terms and conditions:

1. THE PREMISES

1.1 The Premises shall comprise an area of _____ square feet, more or less, such area is to be measured and determined in accordance with the Landlord’s standard form of lease (the “Lease”) on the plan as outlined on the attached Schedule _____, located on all or a portion of the lands described in clauses 1.2 and 1.3.

1.2 Municipal Address: _____

1.3 Legal Description: Plan _____ Block/Unit _____ Lot _____

2. TERM

2.1 The Lease shall be for a term of _____ years and _____ months commencing on the _____ day of _____, 20____ and terminating on the _____ day of _____, 20____.

3. BASIC RENT

3.1 Basic Rent is the rental rate payable to the Landlord exclusive of common area or shared costs and utilities. Basic Rent shall be \$ _____ per annum, payable monthly in advance, or as described below:

3.2 Tenant inducements, if any, agreed to by the landlord shall be _____

4. ADDITIONAL RENT

4.1 Common expenses shall be estimated by the Landlord from time to time and the Tenant shall pay its proportionate share of such common expenses as Additional Rent monthly, in advance, on the first day of each month. Such proportionate share is to be determined in accordance with the Lease. Common expenses shall be adjusted by the Landlord in accordance with the Lease.

4.2 The Tenant’s proportionate share of common expenses (not including the Tenant’s direct costs) is currently estimated at \$ _____ per square foot per annum or \$ _____ per month.

5. GOODS AND SERVICES TAX (GST)

5.1 The Tenant shall pay GST on all Basic Rent and Additional Rent where applicable.

6. DEPOSITS

- 6.1 The sum of \$ _____, including GST, is delivered in trust to _____ as a Deposit to be applied, if the Tenant is not in default, toward the first _____ month(s) and last _____ month(s) basic rent or to be returned forthwith if this offer is not accepted.
- 6.2 The Deposit will be deposited no later than the third Business Day following the day that Final Signing occurred (as per clause 24.1) or the third Business Day following receipt of the Deposit, whichever is last.
- 6.3 The Deposits shall be held in trust for both the Landlord and the Tenant and shall be:
- (a) refunded forthwith to the Tenant if the offer is not accepted, a condition is not satisfied or waived (as per clauses 12.4 and 12.5) or the Landlord fails to perform this Agreement; or
 - (b) forfeited to the Landlord if the offer is accepted and all conditions are satisfied or waived and the Tenant fails to perform this Agreement.
- 6.4 If there is a dispute between the Landlord and the Tenant as to entitlement to the Deposit, then:
- (a) the brokerage holding the Deposit shall review the circumstances, determine entitlement and pay the money to the party who is entitled to the Deposit;
 - (b) if no reasonable conclusion can be made in regard to (a) above, the brokerage shall notify the parties to the Agreement in writing and shall pay the money into a lawyer's trust account;
 - (c) the parties agree to allow the lawyer and/or the brokerage to deduct from the Deposit a reasonable fee and costs incurred for dealing with the Deposit;
 - (d) a brokerage and/or lawyer acting in good faith under this clause shall not be liable to either party for any damages associated with the handling of the Deposit except as arising from the negligence of the brokerage or lawyer.
- 6.5 If the Tenant fails to execute the Lease presented by the Landlord or fails to take possession of the Premises, the Deposits received shall be forfeited to the Landlord by way of partial payment of liquidated damages and not as a penalty without prejudice to any other rights of the Landlord, including the balance of damages payable to the Landlord.
- 6.6 If the Landlord fails to give possession as set out herein, the Tenant shall cancel this Agreement, withdraw its Deposits and take such remedies as the Tenant has at law.

7. POSSESSION

7.1 The Landlord agrees to give the Tenant access to and vacant possession of the Premises not later than 12 noon on the _____ day of _____, 20____ subject to execution of the Lease, the Tenant's placement of the insurance required by the Lease and the Tenant transferring all applicable metered utilities for the Premises to the Tenant's name.

8. CONDITION OF PREMISES

- 8.1 The Tenant has inspected the Premises and agrees to accept the Premises in "as is" condition unless the Landlord's Work Schedule is attached, setting out work to be completed by the Landlord.
- 8.2 If applicable, the Tenant is authorized to carry out the work necessary to complete the Premises, as set out in the Tenant's Work Schedule attached.
- 8.3 The Tenant agrees to surrender the Premises at the end of the Term in substantially the same condition as the Premises were in at the commencement of the Term, with the exception of reasonable wear and tear, unless otherwise agreed in writing.
- 8.4 Removal of tenant fixtures and leasehold improvements shall be governed by the Lease.

9. PARKING

- 9.1 The Landlord shall provide _____ underground and _____ above ground parking stalls for the use of the Tenant for the Term.
- 9.2 The monthly charge for the parking stall(s) shall be:
- \$ _____ per stall per month; or
 - \$ _____ per month at the commencement of the Term subject to periodic adjustment at the Landlord's request upon 30 days written notice to the Tenant; or
 - included in the Basic Rent.

10. SIGNAGE

10.1 The Tenant shall be permitted to install at its expense identification signage for the Premises subject to the Landlord's written approval, not to be unreasonably withheld, as to design and location and in compliance with all municipal bylaws, regulations and codes.

10.2 The location and additional fees for any identification signage shall be as follows: _____

11. USE OF PREMISES

11.1 The Premises shall only be used for _____

11.2 The Landlord grants the Tenant exclusivity with respect to the following uses: _____

12. CONDITIONS

12.1 The Tenant's Conditions are _____

Before 5 p.m. on _____, 20_____, (the "Condition Day").

12.2 The Landlord's Conditions:

(a) Due Diligence Condition

Within three (3) Business Days of Acceptance, the Tenant will provide the Landlord with such documentation, records and authorities as may be reasonably requested by the Landlord. The documentation may include: proof of the Tenant's credit worthiness; Tenant history and/or business plan; franchise or corporate information if applicable; and,

It is a condition precedent of this offer that the information be satisfactory to the Landlord.

Before 5 p.m. on _____, 20_____, (the "Condition Day").

(b) Additional Landlord's Condition

Before 5 p.m. on _____, 20_____, (the "Condition Day").

12.3 Unless otherwise agreed in writing, the Tenant's Conditions are for the sole benefit of the Tenant and the Landlord's Conditions are for the sole benefit of the Landlord. The Tenant and Landlord must use reasonable efforts to satisfy their respective Conditions.

- 12.4** The Tenant and the Landlord may unilaterally waive or acknowledge satisfaction of their Conditions by giving a written notice to the other party on or before the stated Condition Day. If that notice is not given, then this Agreement is ended immediately following that Condition Day.
- 12.5** Subject to clause 12.3, the Tenant and the Landlord may give written notice to the other party on or before the stated Condition Day advising that a Condition will not be waived, has not been satisfied and will not be satisfied on or before the Condition Day. If that notice is given, then this Agreement is ended upon the giving of that notice.

13. ATTACHED SCHEDULES

13.1 The following schedules form part of this Contract and are attached:

- | | |
|---|---|
| <input type="checkbox"/> Additional Rent Schedule | <input type="checkbox"/> Landlord's Work Schedule |
| <input type="checkbox"/> Landlord's Standard Lease Form | <input type="checkbox"/> Tenant's Work Schedule |
| <input type="checkbox"/> Addendum | <input type="checkbox"/> _____ |
| <input type="checkbox"/> _____ | <input type="checkbox"/> _____ |

14. THE LEASE

- 14.1** Within ten (10) days of unconditional acceptance of this Agreement, the Landlord will prepare and provide to the Tenant the Lease to conform to the provisions in the Agreement.
- 14.2** The Tenant shall execute the Lease within a reasonable period of time.
- 14.3** The provisions of this Agreement shall survive the execution of the Lease. The Landlord and the Tenant acknowledge and agree that in the event of any conflict between the terms of this Agreement and the Lease the terms of this Agreement shall govern.

15. ASSIGNMENT AND SUBLEASE

- 15.1** The Tenant shall have the right to assign the Lease and sublet and/or change the use of the Premises with the written consent of the Landlord, such consent not to be unreasonably withheld.
- 15.2** Any assignment or subletting by the Tenant will not relieve the Tenant of liability under the Lease.

16. RENEWAL

- 16.1** If the Tenant is not in default of any of the terms and conditions of the Lease, the Tenant shall have the right, upon written notice delivered to the Landlord not later than six (6) months prior to the end of the Term, to renew the Lease for a further _____ () year term on the same terms and conditions save and except for: this option to renew; the Landlord's work responsibilities; free rent; Tenant inducements; and Basic Rent, which will be determined by agreement between the Landlord and Tenant or, in default of agreement, by arbitration according to the *Arbitration Act* (Alberta).

17. ADDITIONAL TERMS

- 17.1** All time periods, deadlines and dates in this Agreement will be strictly followed and enforced. All times will be Alberta time unless otherwise stated.
- 17.2** This Agreement is for the benefit of and will be binding upon the heirs, executors, administrators and assigns of the individual parties and the successors and assigns of corporate parties.
- 17.3** Capitalized words used in the headings, where applicable, shall define the terms used in this Agreement.
- 17.4** This Agreement will be governed by the laws of the Province of Alberta. The parties submit to the exclusive jurisdiction of the Courts in the Province of Alberta regarding any dispute that may arise out of this transaction.
- 17.5** Other: _____

18. BINDING AGREEMENT

- 18.1** This offer, when accepted, shall constitute a binding Agreement to Lease.
- 18.2** The Landlord and the Tenant each acknowledge that, except as otherwise described in this Agreement, there are no other warranties, representations or collateral agreements made by or with the other party, the Landlord's brokerage and the Tenant's brokerage about the property, any neighbouring lands, and this transaction, including any warranty, representation or collateral agreement relating to the size/measurements of the land and buildings or the existence or nonexistence of any environmental condition or problem.

19. ENVIRONMENTAL HAZARDS

- 19.1 The Landlord is responsible for pre-existing environmental hazards on the Premises, if any, at the time the Tenant takes possession.
- 19.2 The Tenant is responsible for environmental hazards that result from its subsequent use and occupancy of the Premises and indemnifies the Landlord with respect thereto.

20. ADVICE

- 20.1 This Agreement is intended to create binding legal obligations. The Landlord and the Tenant should read this Agreement carefully and are encouraged to obtain legal advice before signing.
- 20.2 This Agreement may be signed and sent by fax or by email and these procedures will be as effective as signing and delivering an original copy.
- 20.3 Unless there is a written agreement for alternate representation, the Landlord's brokerage represents the Landlord as Landlord's Agent and does not have a fiduciary relationship with the Tenant, and the Tenant's brokerage represents the Tenant as Tenant's Agent and does not have a fiduciary relationship with the Landlord.
- 20.4 The Landlord and Tenant agree that the Lease and other related information regarding this transaction may be retained and disclosed by the brokerage and/or the real estate board(s) as required for closing and for reporting, appraisal and statistical purposes.

21. DEFINITIONS

- 21.1 In this Agreement:
 - (a) "Business Day" means every day but Saturday, Sunday and statutory holidays.
 - (b) "Notice" means any notice referred to in this Contract and includes communication of the acceptance of an offer to lease.

22. REPRESENTATIVES/NOTICE/COMMUNICATION

Note: This section must be filled out in full.

- 22.1 As long as the Representative information in 22.3 is completed, the identified Representatives are authorized to send and receive any Notices, documents and information on behalf of their respective clients in person, by fax, or by email. Tenant and Landlord acknowledge there are risks with each of these methods.
- 22.2 Tenant and Landlord agree that any Notices, documents and information exchanged between the parties in person, by fax, or by email will be considered effective at the time they are sent.
- 22.3 The following addresses must be used for all communication between Tenant, Landlord and their Representatives, unless otherwise stated. If the information changes, Tenant and Landlord must tell each other, in writing, through their Representatives, within two Business Days of the change.

Landlord's Representative:

Broker, Associate Broker or Associate registered to the Brokerage

Brokerage Name _____

Brokerage Address _____ (postal code)

Phone _____ Fax _____

Email _____

Tenant's Representative:

Broker, Associate Broker or Associate registered to the Brokerage

Brokerage Name _____

Brokerage Address _____ (postal code)

Phone _____ Fax _____

Email _____

23. OFFER

23.1 Tenant and Landlord agree that an electronic signature, as defined in the *Electronic Transactions Act* (Alberta), or a digitized signature will have the same function as an ink signature.

23.2 The Tenant offers to lease the Premises according to the terms of this Agreement.

23.3 This offer/counter offer shall be open for acceptance in writing until _____m. on _____
_____, 20_____.

SIGNED AND DATED at _____, Alberta at _____m. on _____, 20_____.

TENANT (CORPORATE NAME)

Per: _____
Authorized Signing Officer(s)

Witness

Print Name of Authorized Signing Officer(s)

Print Name of Witness

Per: _____
Authorized Signing Officer(s)

Witness

Print Name of Authorized Signing Officer(s)

Print Name of Witness

Tenant's GST # _____

PART B – ACCEPTANCE

24. ACCEPTANCE

24.1 The Landlord accepts the Tenant's offer and agrees to lease the Premises according to the terms of the Agreement.

SIGNED AND DATED at _____, Alberta at _____m. on _____, 20_____.

LANDLORD (CORPORATE NAME)

Per: _____
Authorized Signing Officer(s)

Witness

Print Name of Authorized Signing Officer(s)

Print Name of Witness

Per: _____
Authorized Signing Officer(s)

Witness

Print Name of Authorized Signing Officer(s)

Print Name of Witness

Landlord's GST # _____